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iRISE

IN THE UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

iRISE, a California corporation,

Plaintiff,

v.

AXURE SOFTWARE SOLUTIONS,
INC., a California corporation; and
INTEGRATED ELECTRICAL
SERVICES, INC., a Delaware
corporation,

Defendants.

AND RELATED COUNTERCLAIM

) Case No. 08-CV-03601 SJO (JWJx)

) **MEMORANDUM OF POINTS**
) **AND AUTHORITIES OF**
) **PLAINTIFF iRISE IN SUPPORT**
) **OF ITS MOTION *IN LIMINE* NO. 5**
) **TO EXCLUDE EVIDENCE OF**
) **PLAINTIFF'S ACTUAL OR**
) **PERCEIVED MOTIVATIONS FOR**
) **FILING THIS LAWSUIT**

) **MIL Hearing**

) Date: September 29, 2009

) Time: 9:00 a.m.

) Ctrm.: 880

) Pre-Trial Conf.: September 21, 2009

) Trial Date: September 29, 2009

) Hon. S. James Otero

1 Through this motion *in limine*, Plaintiff and Counterdefendant iRISE
 2 (“iRise”) seeks an order preventing Defendant and Counterclaimant AXURE
 3 SOFTWARE SOLUTIONS, INC. (“Axure”) from presenting any evidence or
 4 argument regarding iRise’s actual or perceived motivations for filing this
 5 lawsuit. Such evidence and argument should be excluded because they are
 6 irrelevant under Rule 402 and because they fail the balancing test under
 7 Rule 403.

8 **I. LEGAL STANDARD**

9 Evidence is relevant if it has “any tendency to make the existence of any
 10 fact that is of consequence to the determination of the action more probably or
 11 less probably than it would be without the evidence.” Fed. R. Evid. 401.
 12 Evidence that is not relevant is inadmissible. Fed. R. Evid. 402. Further,
 13 relevant evidence may be excluded if its probative value is substantially
 14 outweighed by the danger of unfair prejudice, confusion of issues, or misleading
 15 the jury. Fed. R. Evid. 403.

16 **II. BACKGROUND**

17 On June 25, 2009, Axure opposed iRise’s Motion for Partial Summary
 18 Judgment of Infringement of iRise’s U.S. Patent No. 7,349,837 (the “’837
 19 patent”). (See Axure’s Mem. of P. & A. in Opp’n to iRise’s Mot. for Partial
 20 Summ. J. of Infringement of U.S. Patent No. 7,349,847 (“Opposition Brief”)¹.)
 21 In its Opposition Brief, Axure attempted to guess some of iRise’s alleged
 22 motivations for filing this lawsuit, including the following:

- 23 • “iRise e-mails suggest that the present action was filed to disrupt
 24 Axure’s business.” (*Id.* at 4.)

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26
 27 ¹ iRise understands that the Court has a copy of Axure’s Opposition Brief,
 28 which was filed under seal with the Court.

- 1 • “The present action was initiated in June 2008, shortly after the ’837
2 patent issues, whereupon a blogger on a prototyping website called
3 MNteractive noticed the following exchange with an iRise sales
4 representative. . . .”

5 Me: “Give me your 2 minute why iRise versus Axure.”

6 Rep: “Well first, we just filed a patent infringement lawsuit
7 against them.” (*Id.*)

- 8 • “iRise’s desire to ‘take these Axure guys out,’ coupled with iRise’s
9 leveraging of the present action for sales pitches, indicate that iRise is
10 more interested in using the ’837 patent as a sword to eliminate a
11 potential competitor than as a shield to protect iRise’s intellectual
12 property.” (*Id.* at 4-5.)

13 **III. ANY ALLEGED MOTIVATION THAT IRISE MAY HAVE FOR** 14 **FLING THIS LAWSUIT IS IRRELEVANT**

15 Axure’s statements, quoted above, regarding iRise’s alleged motivations
16 for filing this lawsuit, have nothing to do with any claim or defense in this case.
17 Moreover, Axure has not asserted any counterclaim that would call into
18 question iRise’s motivations for filing this lawsuit. (*See* Answer of Axure
19 Software Solutions to Pl. iRise’s Complaint; and Counterclaims (Dkt. No. 20).)
20 Thus, any such alleged motivations are irrelevant to this case. *See, e.g.,*
21 *Georgeson v. Dupage Surgical Consultants, LTD.*, 2007 WL 914207, at *2 (N.
22 D. Ill. March 22, 2007) (“Evidence of [Plaintiff’s] motivation for filing this suit
23 will shed no light on either his rights or the defendants’ alleged violations of
24 those rights, and therefore his alleged motivation is irrelevant.”); *Proctor &*
25 *Gamble Co. v. Haugen*, 2007 WL 701812, at *3 (D. Utah March 2, 2007)
26 (granting Plaintiff’s Motion *in Limine* to exclude evidence regarding its reasons
27 for filing the lawsuit on the grounds that such evidence is not relevant);
28 *Grammenos v. Allstate Ins. Co.*, 2009 WL 1426273, at *2 (E.D. Pa. April 30,

1 2009) (holding that evidence of Defendant's motivation in filing complaint
2 against the Third Party Defendant is not relevant because there was no "bad
3 faith" claim in the case).

4 Accordingly, iRise's alleged or actual motivations for filing this lawsuit
5 are irrelevant to Axure's defenses or counterclaims and should be excluded
6 under Rule 402.

7 **IV. ANY PROBATIVE VALUE OF IRISE'S ALLEGED**
8 **MOTIVATIONS FOR FLING THIS LAWSUIT IS SUBSTANTIALLY**
9 **OUTWEIGHED BY THE LIKELIHOOD OF UNFAIR PREJUDICE AND**
10 **CONFUSION**

11 Permitting Axure to present evidence or argument regarding iRise's
12 alleged or actual motivations for filing this lawsuit would confuse the jury into
13 thinking that this may be a factor in determining the legal issues in the patent
14 infringement lawsuit. Moreover, even if iRise's motivation was to stop Axure's
15 infringing activity, that motivation is legitimate under the patent laws. By its
16 very nature, a patent is anticompetitive, and the patent itself is a grant to the
17 inventor of "the right to exclude others from making, using, offering for sale, or
18 selling the invention. . . ." *In re Ciprofloxacin Hydrochloride Antitrust*
19 *Litigation*, 544 F.3d 1323, 1333 (Fed. Cir. 2008) (citing 35 U.S.C. § 154(a)(1));
20 *Dawson Chemical Co. v. Rohm & Haas Co.*, 448 U.S. 176, 215 (1980)).
21 Accordingly, Axure's evidence or argument that iRise was allegedly motivated
22 to file this lawsuit to stop a competitor from infringing iRise's patent has no
23 probative value. Moreover, even if iRise's motivation for filing suit had some
24 probative value in this case (which it does not), that value would be
25 substantially outweighed by the likelihood of jury confusion and unfair
26 prejudice to iRise. *See, e.g., Grammenos*, 2009 WL 1426273, at *2.

27 Thus, any evidence or argument regarding iRise's alleged or actual
28 motivations for filing this lawsuit should be excluded under Rule 403.

V. CONCLUSION

Evidence concerning iRise's actual or perceived motivation for filing this lawsuit is irrelevant to Axure's defenses and counterclaims. Moreover, any probative value of such evidence is substantially outweighed by the likelihood of unfair prejudice and confusing and misleading the jury. Thus, any and all evidence and argument relating to iRise's actual or perceived motivations for filing this lawsuit should be excluded from trial.

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: August 25, 2009

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